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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,650	10/18/2004	Jakob Bjerkemo	1321-8 (21061 US JLN MBN)	2292
7590	12/05/2005		EXAMINER HOLZEN, STEPHEN A	
David M Carter Carter DeLuca Farrell & Schmidt 445 Boadhollow Road Suite 225 Melville, NY 11747			ART UNIT 3644	PAPER NUMBER

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/511,650

Applicant(s)

BJERKEMO, JAKOB

Examiner

Stephen A. Holzen

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 6, 10 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-9, 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/18/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 6, 10, and 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/19/2005.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 7-8, 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Scherrer et al (5,250,950). Scherrer et al discloses a vehicle having a plurality of external surfaces that are fashioned from planar faces. The planar faces or panels are angularly positioned to reduce the scattering energy in the direction of the receiver. The purpose of this invention is to reflect radar signals, which strike the vehicle away from a receiver of these signals. The examiner has cut and paste a side view of the Scherrer et al vehicle as illustrated in Figure 1. See Illustration #1 below.

Scherrer et al discloses the planar surfaces, which intersect each other, and when these surfaces are seen from a side view illustration, they appear as lines that form acute angles. Since the entire aircraft is a blended wing and body aircraft it should be appreciated that the nose section of Scherrer creates lift and

can therefore be viewed as a wing. Lines 1, 2, and 3, each form acute angles and are part of the nose and the wings of the aircraft.

4. Claims 1-5, 7-9 and 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Scherrer. Applicant should references Illustration #2 below. Since the entire aircraft is a blended wing and body aircraft it should be appreciated that the nose section of Scherrer creates lift and can therefore be viewed as a wing. Lines A, B, and C, each form acute angles and are part of the nose and the traditional wings of the aircraft.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claims 1-5, 7-9, 11-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The examiner cannot determine what all is meant by and encompassed by the phrase "plane".

b. The examiner cannot determine what all is meant by and encompassed by the phrase "some of these".

c. "Plane" I don't know what this means (1) what is being referred to by the phrase "these", (2) does some imply "not all"

- d. How does a structure form a "line"? A line is a two dimensional illustration and not a structure. Edges are not lines. Edges may however appear to be a line from a single perspective.
- e. The phrase "as seen in a lateral view of the craft" is indefinite since the applicant has not defined what the "lateral view" would be. Who is doing the viewing, from which side is the aircraft, viewed from? The applicant cannot claim a lateral view as illustrated in the figures. The same goes for "planar view". The same goes for "the direction perpendicular to the planar view. There are at least 4 different viewpoints that are perpendicular to "the planar view". The applicant has not enabled each of these.
- f. A fold cannot be --in an exterior of the aircraft--. The fold is either "in", "on" or "exterior to" the aircraft not "in an exterior portion".
- g. The examiner cannot determine if the phrase "stealth" holds any patentable weight. This is essentially a recitation with respect to how the craft is used. Apparatus claims can only be defined by their structure and not functionally.
- h. The phrase "as seen" is an omnibus claims. The applicant cannot refer to the drawings to impart patentable weight.

Notes to Applicant

The examiner stopped at only two illustrations, however it should be appreciated that a plurality of these types of illustrations (such as illustrations #1 and #2 below) could have been read on the applicant's claims as presently claimed.

The examiner suggests that the applicant amend into the claims structure, and not shape. The applicant will have a difficult time obtaining a patent based on angles and lines alone. The Court has held that the shape of an object is merely a matter of choice, which a person of ordinary skill in the art would have found obvious. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). The applicant needs to appreciate that angle planar surfaces are well known in the art. Scherrer et al teaches that angles surfaces are advantageous to reduce the radar cross section that can be seen. There, although not relied upon in this rejection, the examiner asserts that it would have been obvious to arrange the angles and the surfaces of a stealth vehicle in a manner that would reduce the radar cross section thereof. The angling of surfaces is well within the skill of one within the art. Furthermore canard wings are well known in the art. It would be within the skill of a worker in the art to put canard wings on a stealth aircraft. (See for example the following patents that each teach canards are well known in the art: 2003/0052228; 4,417,708; 4,741,497; 5,250,950; 6,047,923; 6,070,831; 6,575,406; 6,942,178.)

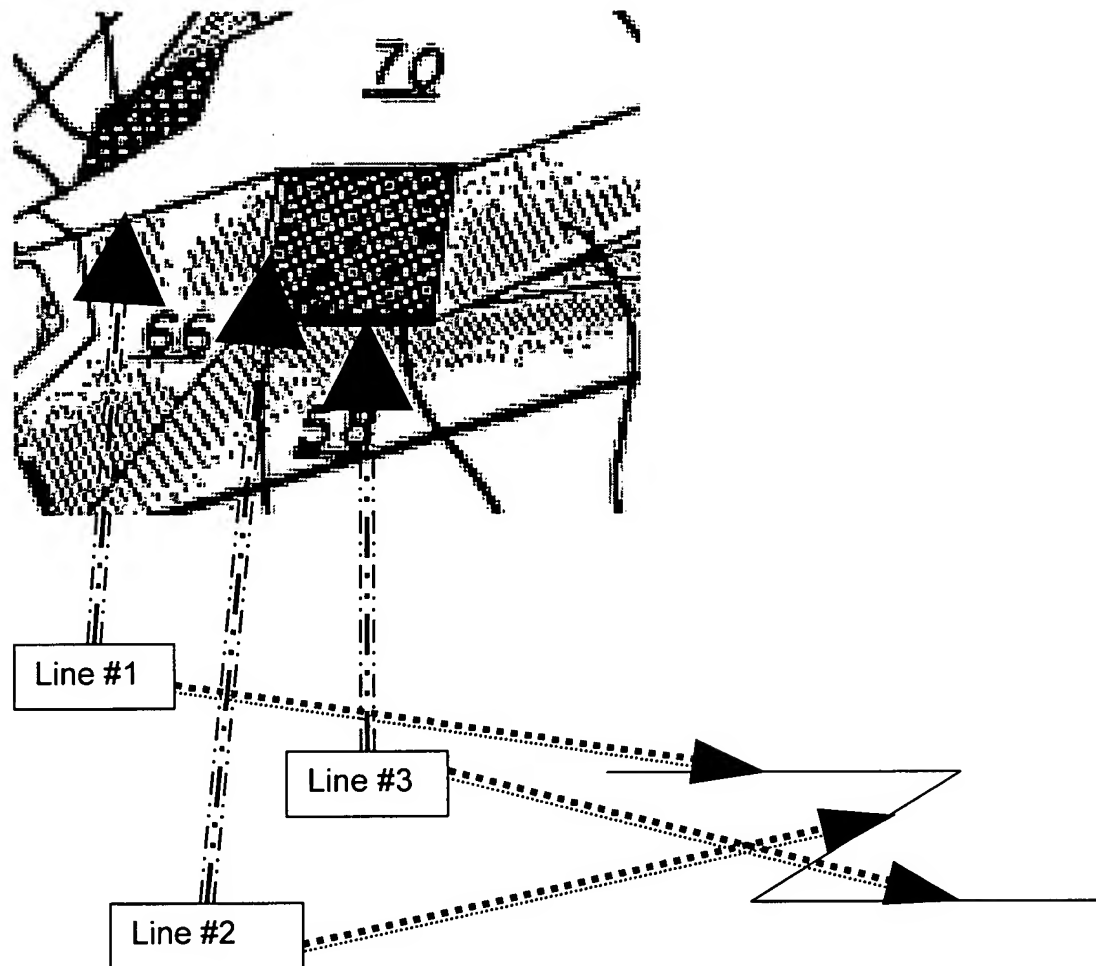


Illustration #1: Side view of Scherrer et al's aircraft as illustrate in Figure 1

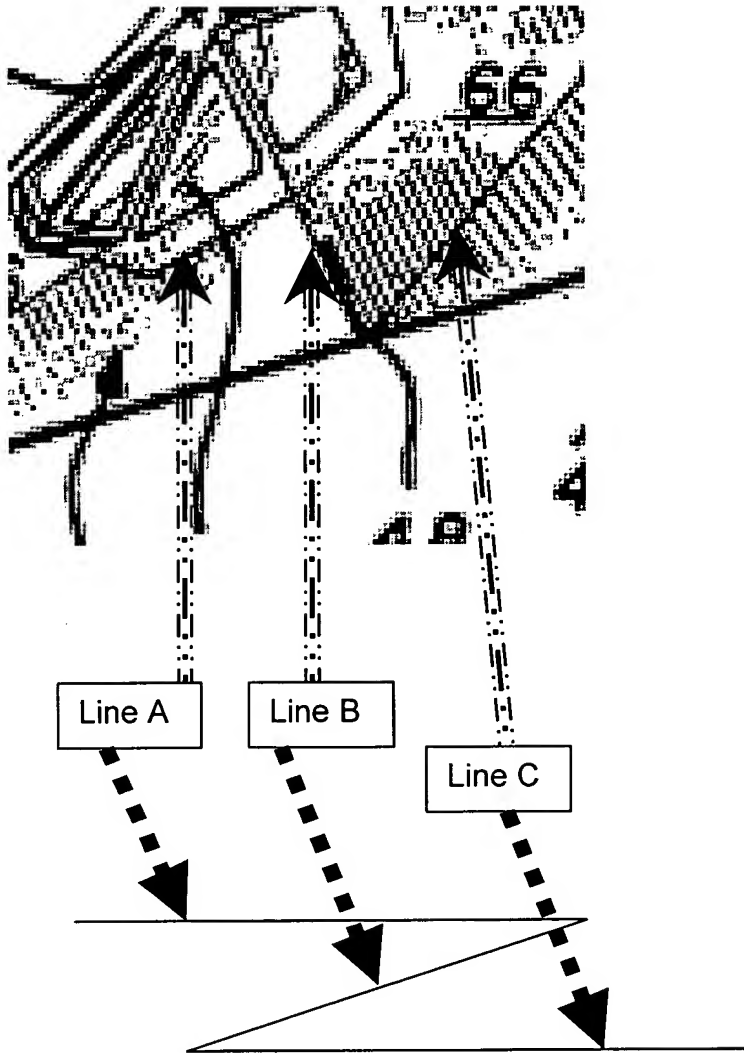



Illustration #2: Side view of Scherrer et al's aircraft as illustrated in Figure 1


TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER